

**STATE BOARD OF EQUALIZATION**

916/445-6493

February 16, 1984

Ms. H--- P--- V---  
XXXX --- ---  
--- ---, CA XXXXX

Dear Ms. V---:

This is in reply to your letters of December 17, 1983 and January 30, 1984 in which you request our opinion as to the correct application of tax to your sale of herb and herbal products, which are sold in capsule form. These items are produced by Orion International, Inc.

In our view, the various Orion products known as "Herbs and Herbal Products" and "Natures Pantry Herb Products" which are listed below are all unusual foods and qualify as food products for human consumption under Sales and Use Tax Regulation 1602. As such, tax does not apply to the sale or use of the following products:

Super Energy (Item #201-30)	Beet Powder (Item # 607-60)
Natural Energy Plus (Item #205-30)	Herb Kal (Item #608-60)
Kola Nut (Item #202-30)	Nature Trim 200 (Item #1402-30)
Nature Trim 100 (Item #401-30)	Nature Trim 102 (Item #1403-30)
Cy-Nus (Item #807-30)	Lifeforce (Item #601-30)
FE-30 (Item # 803-30)	Lifeforce PM (Item #402-30)
HRPEZ (Item #810-30)	Lifeforce III (Item #604-30)
Colon Clenz (Item #811-30)	Mead Pak (Item #601-30)
Skin Kare (Item #813-30)	Nature Calm (Item #602-30)
CCF (Item #912-60)	CFY (Item #603-30)
Lifeforce III B (Item #604-30B)	Arth-Ry-Tus (Item #804-30)
Lifeforce III C (Item #604-30C)	AL-R-G (Item #606-60)
Sod/Ginseng (Item #605-30)	Arth-Ry-Tus Pain (Item #805-60)
STRS (Item #606-30)	

Sales and Use Tax Regulation 1602(a)(5)(A) provides that the term "food product" does not include any product for human consumption in capsule form "which is described on its package or label as a food supplement." Because each of the products listed below is described on its

label as a "food supplement," it is our opinion that these products do not qualify as exempt food products under Regulation 1602. Therefore, tax applies to the sale or use of:

079 Spirulina  
077 Spirulina Ginseng  
026 Lifeforce Junior

If you have any further questions concerning this matter, please write this office.

Very truly yours,

Charles J. Graziano  
Tax Counsel

CJG:ba